COLLIDER-ACCELERATOR DEPARTMENT'S

TANDEM VAN de GRAAFF ACCELERATOR

As part of the RELATIVISTIC HEAVY ION COLLIDER ("RHIC") Complex

PROPRIETARY USER'S AGREEMENT

THIS AGREEMENT is entered into as of the date of the last signature by BROOKHAVEN SCIENCE ASSOCIATES, LLC, (hereinafter referred to as "BSA"), acting under Contract No. DE-AC02-98CH10886 with the United States Department of Energy, on behalf of the United States Government, (hereinafter referred to as "DOE"), which provides for the operation and maintenance by BSA of the Brookhaven National Laboratory, at Upton, New York, and _____ (hereinafter referred to as "Contractor"), having its principal place of business at _____ .

1. BSA, acting under Contract No. DE-AC02-98CH10886, will provide the Collider-Accelerator Department's Tandem Van de Graaff Accelerator Facility and related equipment and personnel to the Contractor as set forth in this User's Agreement.

2. Under the terms of this Agreement, the Contractor will use the Tandem Van de Graaff Accelerator Facility for the conduct of proprietary work which must first receive facility time and space approval from the Chairman of the Collider-Accelerator Department or designee at Brookhaven National Laboratory. It is understood that to receive such approval, the Contractor is obligated to provide information disclosing the potential hazards of the work, since such information is essential to BSA to operate the Tandem Van de Graaff Accelerator Facility and is necessary for the health and safety of facility and Contractor personnel. Any information

for proprietary work submitted to BSA which is not approved by the Chairman of the Collider-Accelerator Department for performance at the Tandem Van de Graaff Accelerator Facility shall be returned to the Contractor and BSA and DOE shall obtain no rights in such proposal. Upon termination of this Agreement, the Contractor agrees to deliver to BSA a non-proprietary description of the work performed at the Tandem Van de Graaff Accelerator Facility. The Contractor will not be required to disclose data or experimental details of a proprietary nature to BSA. It is understood that compliance with the provisions of this paragraph satisfies the requirements of paragraph 3 (b) of Appendix B to this Agreement.

3. For planning purposes, the Contractor shall submit to the Collider-Accelerator Department, an estimate of the amount of beam time they will require at the Tandem Van de Graaff Accelerator Facility prior to expected date of arrival. It is understood that the Contractor's use of the Tandem Van de Graaff Accelerator Facility shall be subject to availability of the Facility, and that DOE program research work and facility maintenance activities take precedence over the Contractor's use.

4. The Contractor must pay to BSA a fee for the use of the Tandem Van de Graaff Accelerator Facility for proprietary work, which fee represents full cost recovery by BSA. Appendix A attached hereto sets forth the basic pricing policy applicable to proprietary users of the Tandem Van de Graaff Accelerator Facility. For those months that the Contractor uses the Tandem Van de Graaff Accelerator Facility, BSA will submit an invoice to the Contractor setting forth the fee due from the Contractor for use of the Facility for the number of hours. Such invoices should be paid by Contractor within thirty days of submission by BSA.

5. The Contractor will be furnishing to BSA, materials, tools and equipment

necessary for the conduct of its proprietary work. Such items shall remain the property of the Contractor. All such property furnished by the Contractor shall be suitably identified and accounted for in accordance with Brookhaven's property management policies and procedures. At the expiration or termination of this Agreement all such equipment, tools and materials shall be disassembled, packaged and returned to the Contractor at its cost and expense unless otherwise agreed. Brookhaven shall have no responsibility for Contractor's property in its possession other than loss or damage caused by willful misconduct or gross negligence of Brookhaven or its employees.

6. Neither the United States Government, DOE, or BSA, nor persons acting on their behalf, will be responsible for any injury to or death of persons or damage to or destruction of property or for any other loss, damage or injury of any kind whatsoever resulting from the performance of services or furnishing of facilities or materials hereunder, except where such damage results from the fault or negligence of the Government, DOE, BSA, or persons acting on their behalf.

7. The Contractor agrees to indemnify and hold harmless the United States Government, DOE, BSA, and persons acting on their behalf from (1) all liability, including costs and expenses incurred, resulting from the Contractor's use or disclosure of any information in whatever form, furnished or generated hereunder, and (2) all liability to any person, including the Contractor, for injury to or death of persons or injury to or destruction of property arising out of performance hereunder by the United States Government, DOE, BSA, or persons acting on their behalf, except where such injury or damage results from the fault or negligence of the United States Government, DOE, BSA, or persons acting on their behalf.

8. While at Brookhaven National Laboratory, representatives from the Contractor must comply with all pertinent procedural, safety, environmental and health rules and regulations of Brookhaven National Laboratory and DOE.

9. Whenever any invention is made or conceived in the course of or under this Agreement, or whenever technical data is generated in performance of research under this Agreement, disposition of rights to said invention or technical data shall be governed by the provisions of Appendix B hereto entitled "Patent and Technical Data Provisions". Appendix B incorporates the provisions of the "Class Waiver of Government Rights in Inventions Arising from the Use of DOE Facilities and Facility Contractors By Or For Third Party Sponsors", issued by DOE. For the purposes of this Agreement, the term "Sponsor" used in Appendix B shall mean the Contractor.

10. BSA shall have the right to use, without payment of any compensation, any information delivered to BSA under the terms of this Agreement which is not marked as "proprietary data" of the Contractor pursuant to paragraph 3 of Appendix B to this Agreement.

11. Contractor may terminate this Agreement at any time by giving not less than thirty (30) days prior written notice to BSA. BSA may terminate this Agreement at any time but will endeavor to provide the necessary access to the facility to complete scheduled research prior to contract termination. Whether termination is initiated by BSA or Contractor, such termination shall only affect the term of this Agreement, and shall otherwise be without prejudice to the rights and obligations of the parties hereunder which may have theretofore occurred.

12. BSA encourages Contractor to disseminate information concerning their work at the Tandem Van de Graaff Accelerator Facility under this Agreement through the use of

technical meetings, literature and the like. However, no use shall be made of the name "Brookhaven National Laboratory", "Brookhaven Science Associates, LLC" or the "U.S. Department of Energy" without the prior written approval of BSA or the U.S. Department of Energy.

13. It is expressly agreed by the parties hereto that this Agreement constitutes the entire and only contract between the parties hereto with respect to the proprietary work to be conducted by the Contractor at the Tandem Van de Graaff Accelerator Facility; that there are no agreements, understandings, or covenants between the parties hereto of any kind, nature or description, express or implied, oral or otherwise which have not been set forth herein; and that this Agreement cannot be modified, altered, amended or changed, nor any provision thereof waived or abrogated, except by an instrument in writing and duly executed on behalf of each of the parties hereto by the duly authorized representatives or officers of each party who have been expressly authorized in writing to execute such an instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date of the last signature.

BROOKHAVEN SCIENCE ASSOCIATES, LLC

By _____

Name Lori-Anne Neiger

Title_____

Date_____

By _____

Title _____

Name _____

Date _____

APPENDIX A

BROOKHAVEN NATIONAL LABORATORY
FULL COST RECOVERY RATE
TANDEM VAN DE GRAAFF ACCELERATOR

1) Full Cost Recovery Rates are established at the beginning of each Fiscal Year (effective October 1) and are subject to revision to reflect changing cost factors during the Fiscal Year.

2) BSA will notify the Contractor in writing at the beginning of each Fiscal Year and at any time during the Fiscal Year of any change in the full cost recovery rate for the Tandem Van de Graaff Accelerator.

APPENDIX B

Patent and Technical Data Provisions

1. Patent Rights

(a) Definitions

(1) "Sponsor" means the person or entity with which this agreement is made.

(2) "Subject invention" means any invention or discovery of the Sponsor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture design, or composition of matter, or any new and useful improvement thereof, or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

(3) "Facility Operator" means the operating contractor which manages and operates the Government-owned, contractor-operated facility where the work under this agreement is to be performed.

(4) "Patent Counsel*' means the DOE Patent Counsel assisting the procuring activity.

(b) Rights of the Sponsor - Election to Retain Rights

Subject to the provisions of paragraph (c) of this clause with respect to any Subject Invention reported and elected in accordance with paragraph (d) of this clause, the Sponsor may elect to obtain the entire right, title and interest in any patent application filed in any country on a Subject Invention and in any resulting patent secured by the Sponsor. Where appropriate, the filing of patent applications by the Sponsor is subject to DOE security regulations and requirements.

(c) Rights of Government - Terms and Conditions of Waived Rights

(1) The Sponsor shall promptly provide the Government with a copy of any patents issued on subject inventions.

(2) Notwithstanding any other provision of this clause, the Sponsor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the

Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Sponsor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(3) Title to any Subject Invention shall revert to the Government in the event the agreement required by paragraph (c) (2) of this clause has not been obtained or waived with respect to such invention or because a licensee of the exclusive right to use or sell any such invention in the United States is in breach of such agreement.

(d) Invention identification, disclosures, and reports

The Sponsor shall furnish the Patent Counsel a written report containing full and complete technical information concerning each Subject Invention of the Sponsor within 6 months after conception or first actual reduction to practice, whichever occurs first, in the course of or under the contract, but in any event prior to any on sale, public use or public disclosure of such invention known to the Sponsor. The report shall identify the contract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any election of patent rights under this clause. When an invention is reported under this paragraph (d), it shall be presumed to have been made in the manner specified in Section (a)(1) and (2) of 42 USC 5908.

(e) Limitation of rights

Nothing contained in this patent rights clause shall be deemed to give the Government any rights with respect to any invention other than a Subject Invention except as set forth in the Facilities License of paragraph (f).

(f) Facilities License

In addition to the rights of the parties with respect to inventions or

discoveries conceived or first actually reduced to practice in the course of or under this contract, the Sponsor agrees to and does hereby grant to the Government an irrevocable, non-exclusive paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Sponsor, which at any time through completion of this contract are owned or controlled by the Sponsor and are incorporated in the facility as a result of this agreement to such an extent that the facility is not restored to the condition existing prior to the agreement (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and licensee shall not prevent the Government at anytime from contesting the enforceability, validity or scope of, or title to, any rights or patents herein licensed.

2. Patent and Copyright Indemnity-Limited

The Sponsor shall indemnify the Government and Facility Operator and their officers, agents, and employees against liability, including cost, for infringement of any United States patent or copyright arising out of any acts required or directed by the Sponsor to be performed under the agreement to the extent such acts are not normally performed at the facility. Further, the foregoing indemnity shall not apply unless the Sponsor shall have been informed in a reasonable time by the Facility Operator or the Government of the suit or action alleging such infringement, and such indemnity shall not apply to a claimed infringement which is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

3. Rights in Technical Data - Use of Facility

(a) Definitions

(1) "Technical Data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work to be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process

sheets, manuals, technical reports, catalog item identification and related information. Technical data as used in this subpart does not include financial reports, cost analyses, and other information incidental to contract administration.
"Proprietary Data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

"Unlimited Rights" means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) The Sponsor agrees to deliver to DOE a nonproprietary description of the work performed under this agreement.

(c) The Sponsor agrees to furnish DOE or the Facility Operator those data if any, which are (1) related to health and safety of personnel at the facility or (2) necessary to operate the facility. Any data furnished to DOE or the Facility Operator shall be deemed to have been delivered with "unlimited rights" unless marked as "proprietary data" of the Sponsor. Government shall not disclose properly marked proprietary data of the Sponsor outside the Government and the Facility Operator. The Government reserves the right to challenge the proprietary nature of any markings on data.

The Government shall have unlimited rights in any technical data (including proprietary data) which are not removed from the facility by or before termination of the agreement. The Government shall have unlimited rights in any technical data (including proprietary data) which are incorporated into the facility or equipment under the agreement to such extent that the facility or equipment is not restored to the condition existing prior to such incorporation.

4. Notice and Assistance Regarding Patent and Copyright Infringement

The Sponsor shall report to the Government, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this agreement of which the Sponsor has knowledge.

In the event of any claim or suit against the Government on-account of any alleged patent or copyright infringement arising out of the performance of this agreement or out of the use of any supplies furnished or work or services performed hereunder, the Sponsor shall furnish to the Government when requested by the Government, all evidence and information in possession of the Sponsor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Sponsor has agreed to indemnify the Government.